

**A SUBSTITUTE RESOLUTION
BY TRANSPORTATION COMMITTEE**

06-R-1911

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH 3630 PEACHTREE ROAD HOLDINGS, L.P., FOR THE CONSTRUCTION AND OPERATION OF A TEMPORARY TIE-BACK SUPPORT SYSTEM, ON BEHALF OF THE DEPARTMENT OF PUBLIC WORKS; AND FOR OTHER PURPOSES.

WHEREAS, 3630 Peachtree Road Holdings, L.P. ("3630 Peachtree"), is the developer of two mixed use towers ("Towers") located at 3630 Peachtree Road located in the City of Atlanta ("City"); and

WHEREAS, a temporary tie-back support system is required for the construction of the north side tower, a twenty-nine (29) story residential building and the south side tower, a thirty-two (32) story building, and

WHEREAS, the City Attorney and the professional staff of the Department of Public Works have reviewed the agreement and the plans for the proposed facilities, and have determined that they meet the requirements set forth in Section 138-24(b) of the Official Code of the City of Atlanta.

THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, HEREBY RESOLVES, that the Mayor is authorized to enter into a Temporary Encroachment Agreement (Tie-Back Easement Agreement – Exhibit A), as outlined in Section 138, Article II of the Official Code of the City of Atlanta, with 3630 Peachtree Road Holdings, LP, for the construction, installation, operation, use and maintenance of temporary tie-back facilities in the public right-of-way on Peachtree Road on Peachtree Dunwoody.

BE IT FURTHER RESOLVED, that the Commissioner of Public Works, as the Mayor's designee, is authorized to review and approve the terms and conditions for the construction, maintenance and removal of the temporary tie-back system, and to review and approve the plans for any construction, relocation and/or modification to the referenced tie-back system.

BE IT FURTHER RESOLVED, that the City Attorney is directed to review the appropriate Agreement to be executed by the Mayor.

BE IT FURTHER RESOLVED, that the Temporary Encroachment Agreement will not become binding on the City, and the City will incur no obligation nor liability under it until it has been executed by the Mayor, attested to by the Municipal Clerk, approved as to form by the City Attorney and delivered to 3630 Peachtree Road Holdings, L.P..

BE IT FINALLY RESOLVED, that 3630 Peachtree Road Holdings, L.P. will indemnify the City and hold the City harmless from any and all claims arising from the construction, installation, operation, use, maintenance and removal of said facilities.

AFTER RECORDING RETURN TO:

Mr. Robert Maddux
3630 Peachtree Road Holdings Limited Partnership
3225 Cumberland Blvd.
Suite 400
Atlanta, GA 30339

TIE-BACK EASEMENT AGREEMENT

THIS TIE-BACK EASEMENT AGREEMENT (this "Agreement") is made and entered into this 6th day of June, 2006, by and between CITY OF ATLANTA ("Grantor") and 3630 Peachtree Road Holdings Limited Partnership, a Georgia Limited Liability Partnership ("Grantee").

WITNESSETH:

WHEREAS, in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration paid by each party unto the other, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

1. Background.

- A. Grantor is the owner of all that tract or parcel of PUBLIC STREETS and being in Fulton County, Georgia, and being more particularly noted on *Exhibit A - Site Civil Plan* (the "Grantor's Property").
- B. Grantee is the ground lessee of all that tract or parcel of PRIVATE LAND lying and being in Fulton County, Georgia, and being more particularly described on *Exhibit A - Site Civil Plan & Exhibit B - Legal Description of Property* (the "Grantee's Property"); and
- C. Grantee is developing the Grantee's Property as a mixed use condominium and office building with related improvements (the "Grantee's Improvements").

2. Grant of Easement. Grantor does hereby grant to Grantee and Grantee's employees, agents, and contractors, a temporary non-exclusive easement (the "Tie-Back Easement") beneath that portion of the Grantor's Property identified on Exhibit C (the "Tie-Back Easement Area") for the purposes of installing tie-back rods in support of the Grantee's Improvements (the "Tie-Backs"), said temporary easement to terminate at the earlier of (i) such time as Grantee completes construction of the concrete wall which the Tie-Backs support and (ii) November 5, 2007:

3. Easement Fee. As consideration for the grant of the Tie-Back Easement, Grantee shall pay to Grantor the sum of \$ 10.00 ("Easement Fee").

4. Authority. Grantor represents and warrants that Grantor has full power and authority to enter into this Agreement and to grant the Tie-Back Easement provided for herein, without consent of any other party.

5. Repair of Property. Any and all damage to the Grantor's Property or the improvements or landscaping located thereon resulting from Grantee's exercise of its rights hereunder shall be promptly repaired at the sole cost and expense of Grantee. In all events, Grantee will use and enjoy the easements

granted to Grantee in such a manner as to minimize, to the extent reasonably practicable, any interference with any business or other operations on the Grantor's Property.

6. Lien-Free Construction. Grantee agrees to bear all expenses incurred in performing the work contemplated hereunder. Grantee covenants and agrees that it will not cause or suffer any lien or claim of lien to be filed against any portion of the Grantor's Property as a result of work or maintenance done or caused to be done by Grantee under the provisions of this Agreement. In the event any such lien or claim of lien is filed, Grantee will remove or bond over the same within thirty (30) days after the filing thereof. If Grantee fails to fulfill such obligations as provided above, Grantee may pay or perform the same and the costs thereof shall be reimbursed by Grantee to Grantor on demand.

7. Indemnification. Grantee shall Indemnify and hold harmless Grantor, and its respective officers, agents and employees and assigns (collectively, the "Grantor Indemnities") from and against any and all liabilities, losses, costs, damages and expenses of whatsoever nature that may be incurred by the Grantor Indemnities, or any of them, and arising out of or in connection with personal injury or death of persons, or any loss, destruction or damage to the Grantor's Property or lien against or claim thereof, where any such personal injury, death, loss, destruction, damage, lien or claim thereof results in whole or in part from the acts or omissions of Grantee, its employees, agents, guests, invitees, representatives, contractors and/or consultants or any of them, which acts or omissions are related to the exercise of the easement rights and other rights granted herein.

8. Insurance. Grantee shall cause all persons and entities entering the Tie-Back Easement Area on the Grantor's Property at Grantee's request to maintain adequate and appropriate insurance to cover risks of the type described in Section 7 above.

9. Warranties. Grantee represents and warrants to Grantor (i) that Grantee is the lawful owner of a leasehold estate in the Grantee Property, that there are no easements, grants, deeds to secure debt, restrictions, liens, claims or encumbrances against or affecting Grantor's exercise of its rights under this Agreement; and (ii) Grantee has the full right, power and authority to enter into, execute and deliver this Agreement.

10. Reservation. Grantor hereby reserves all right, title and interest in and to the fee simple estate of Grantor's Property incident to Tie-Back Easement Area, and for any and all purposes not inconsistent with the Grantee's use by of the Tie-Back Easement Area as expressly permitted herein.

11. Miscellaneous.

- A. Each and every covenant and agreement contained herein shall be for any and all purposes hereof construed as separate and independent, and the breach of any covenant by any party hereto shall not discharge or release such party from its or their obligations hereunder.
- B. All rights, powers, and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any then applicable law and shall be limited to the extent necessary to render the real covenants herein valid and enforceable. If any term, provision, covenant or agreement contained herein, or the application thereof to any person, entity or circumstance shall be held to be invalid, illegal, or unenforceable, the validity of the remainder of the terms, provisions, covenants or agreements or the application of such term, provisions, covenant or agreement to persons, entities or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby.

